



United States District Court  
Middle District Of North Carolina

Deric James Lostutter  
Plaintiff

Case No. 1:17CV801

V

Motion To Dismiss

Samantha Cook  
"Special Appearance"  
Defendant

Defendant, Samantha Cook, in a special appearance, moves for dismissal due to insufficient service of process, improper venue and lack of personal jurisdiction or authority to hear case.

A. Insufficient service of process:

As of today, 8/18/18, defendant has not been properly served per federal standards of civil litigation. Defendant does not reside at 116 Cross Street Wintersville, OH 43953 and hasn't in over a year. Plaintiff has expressed his knowledge of this in several court filings in another law suit he filed in this court (Deric Lostutter v Alexandria Goddard). According to federal law Plaintiff is forbidden to have defendants physical address due to an active five year civil stalking protection order the defendant, Samantha Cook, has against the plaintiff, Mr. Lostutter, out of Ohio Case No. 15-CV-461 (EXHIBIT A) This has not stopped him from utilizing this court to stalk and harass family members or the protected person(s) of said protection order. Furthermore, the defendant was notified by a family member in the Steubenville area, via screen shots in a text, that Mr. Lostutter ha placed "service by publication" in two local newspapers in the Steubenville area where the plaintiff is aware the defendant lives at least three hours away. I have yet to see the actual lawsuit.

1. The Plaintiff has failed to serve defendant via certified mail. The court will show there is no signed receipt as such.
2. The plaintiff has failed to serve the defendant via process server/US Marshall
3. Plaintiff has failed to serve the defendant by publication in accordance with NC Gen. Stat. 1-597 and 1-598: federal rule 12 (b) (5) of civil procedure in the following ways:
  - a. The Plaintiff has stated in court documents that the defendant has "relocated to the greater Cleveland area" yet although required to publish in "a paper where the defendant is believed to live" he went out of his way to publish in two papers nearly 3 hours from where the defendant lives.

b. "Plaintiff is required to send a copy of service by publication via USPS" No such mail has been received by the defendant.

c. "publication is to require a defendant to enter a defence within 40 days of publication" What was sent to the defendant via text message had no clear date of publication on it. The date the lawsuit was filed is wrong (it said November 3<sup>rd</sup> 2017 and it was September 3<sup>rd</sup> and plaintiff stated the defendant had "21" days to respond.

d. "Plaintiff must show proof via affidavit from the newspaper in which he published stating that publication has occurred. Specifying the first and last date of publication in order to prove to the court that the notice ran weekly for multiple successive weeks." Plaintiff failed in completing this step by only publishing notice once on one occasion. Recently the Herald Star confirmed Mr. Lostutter only paid for it to run one day and their affidavit they supplied this court proves that.

**B. Improper Venue: Federal Rule 12 (b) (3) of civil procedure:**

The law suit reads in the publication as Mr. Lostutter believes I am in violation of a mediation agreement Robert Ashdown, Deric Lostutter, and I came to in Forsyth County Court (EXHIBIT B). Mr. Lostutter and I were instructed that day that if there is to be believed a violation occurred it is to be taken back to the court in which it originated to be decided if it is of merit and if it is a criminal or civil matter. Mr. Lostutter did not abide by that courts ruling instead he brought it in front of this court. Side stepping the judicial process he was instructed to take. Furthermore, any mention of warrants being served in NC or ex parte restraining orders obtained by Mr. Lostutter in NC against Mr. Ashdown or myself should be stricken from the record. Those cases were dismissed in March of 2016 and therefore irrelevant in this or any case. Therefore, this case should be dismissed on grounds of improper venue.

**C. Lack of personal jurisdiction or authority to hear case: Federal rule 12 (b) (2) of civil procedure**

I do not live in North Carolina. In fact, when since April of 2017 until present the Plaintiff himself has not and does not reside in North Caroline. He is currently a ward of the Federal Bureau of Prisons and being governed by the BOP Cincinatti, OH. I do not have a residence or place of business in North Carolina. The only person that I know in the state of North Carolina is Deric Lostutter who I have an active Civil Stalking protection order against. I have a mediation agreement with Mr. Lostutter that includes no one but him and my fiance Robert Ashdown. (EXHIBIT B) No one else is listed as a plaintiff besides him in this lawsuit. I have not spoken to Mr. Lostutter outside of a court proceedings since October of 2015 when I was awarded an ex parte protection order against him that was then made permanent in December of 2015 after supplying a magistrate with mounds of evidence of his relentless harassment of me, Robert Ashdown, and my underage children who are also on the protection order. A protection order that is currently awaiting a court date to review if the plaintiffs continued misuse of the judicial system (to find my current location) is in review as a violation of said order. Therefore this case should be dismissed.

CERTIFICATE OF SERVICE

I, Samantha Cook, hereby swear under penalty of perjury that on the undersigned date I deposited a true and accurate copy of the foregoing DEFENDANTS MOTION TO DISMISS and all attachments and exhibits thereto in a post-paid envelope addressed to:

Deric Lostutter	UNITED STATES DISTRICT COURT
Inmate 21103-032	324 W. MARKET STREET
C/o RRM Cincinnati BOP	ROOM 401
36 East 7 <sup>TH</sup> street	GREENSBORO, NC 27401
Suite 2107A	ATTN CLERK OF COURTS
Cincinnati, OH 45202	

And deposited said envelope into the USPS on the undersigned date for delivery

August 18<sup>th</sup> 2018

Sincerely,

Samantha Cook  
Defendant, Pro Se

\*\*\*Address redacted and confidential due to defendants active civil stalking protection order against the plaintiff, Deric Lostutter\*\*\*